

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ALEXANDRU POPA,

Plaintiff,

v.

VANESSA PEREZ, MERCEDES-BENZ
CORPORATION otherwise known as
MERCEDES-BENZ USA, LLC, JOHN and
JANE DOES (1-100) and XYZ COMPANIES
(1-100),

Defendants.

Case No.

DEFENDANT MERCEDES-BENZ USA, LLC’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Mercedes-Benz USA, LLC (incorrectly identified as Mercedes-Benz Corporation otherwise known as Mercedes-Benz USA, LLC) (“Mercedes-Benz”), hereby files this Notice of Removal from the Superior Court of New Jersey, Law Division, Hudson County, to the United States District Court for the District of New Jersey,¹ and alleges as follows:

I. NATURE OF THE CASE

1. On June 21, 2019, Plaintiff Alexandru Popa (“Plaintiff”), filed a civil action in the Superior Court of New Jersey, Law Division, Hudson County, styled *Alexandru Popa v. Vanessa Perez et al.*, Docket No. HUD-L-2467-19. See **Exhibit A**, Compl.

¹ By removing this action to this Court, Mercedes-Benz does not waive any defenses, objections, or motions available under state or federal law. Mercedes-Benz expressly reserves the right to move for dismissal of some or all of Plaintiff’s claims and/or seek dismissal based on lack of personal jurisdiction, improper venue, and/or the doctrine of *forum non conveniens*.

2. Mercedes-Benz was served with Plaintiff's Complaint on July 2, 2019. *See Exhibit A*, Service of Process Transmittal with Summons and Compl.

3. Accordingly, this Notice is being filed within thirty (30) days after receipt by Mercedes-Benz of the initial pleading setting forth the claim for relief upon which the action is based, as required by 28 U.S.C. § 1446(b)(1).

4. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process and pleadings served on Mercedes-Benz is attached hereto as **Exhibit A**, which is incorporated herein by reference.

5. The Complaint asserts negligence, strict liability, *res ipsa loquitur*, and breach of warranty claims against Mercedes-Benz to recover compensatory and punitive damages allegedly sustained by Plaintiff as a result of an automobile accident, during which Plaintiff claims he was operating a vehicle manufactured by Mercedes-Benz that experienced failures of the seatbelt and/or airbags. *See Exhibit A*, Compl.

6. The Complaint also asserts a separate negligence claim against Defendant, Vanessa Perez, to recover compensatory and punitive damages based on allegations that Defendant Perez caused the automobile accident when, while intoxicated, she turned her Jeep Cherokee into Plaintiff's oncoming lane of traffic in disregard of a traffic signal, striking Plaintiff's vehicle in the front and/or side. *See Exhibit A*, Compl.

7. This Court has original subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1332, because there is complete diversity of the parties and the amount in controversy exceeds the sum or value of \$75,000.

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION

A. Diversity of Citizenship Exists Among The Parties

8. Plaintiff alleges in the Complaint that he resides at 64 South Main Street, Apt. 1F, Spring Valley, New York 10977. *See Exhibit A*, Compl. at preamble. Thus, upon information and belief, Plaintiff is, and was at the time of the filing of this action, a resident and citizen of New York. *See id.*

9. Plaintiff further alleges in the Complaint that Defendant, Vanessa Perez, resides at 1223 81st Street, Apt. 1, in North Bergen, New Jersey 07047-4153. *See Exhibit A*, Compl. at ¶ 2. Thus, upon information and belief, Defendant Perez is, and was at the time of the filing of this action, a resident and citizen of New Jersey. *See id.*

10. Defendant Mercedes-Benz USA, LLC is a limited liability company organized and existing under the laws of the state of Delaware with its principal place of business located in the state of Georgia. The only member of Mercedes-Benz USA, LLC is Daimler North America Corporation, which is incorporated under the laws of the state of Delaware with its principal place of business in the state of Michigan. Defendant Mercedes-Benz USA, LLC is therefore a citizen of Delaware and Michigan for purposes of diversity jurisdiction.²

11. Accordingly, diversity of citizenship exists between Plaintiff and all Defendants.

B. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

12. “The amount in controversy is generally decided from the face of the complaint itself.” *Angus v. Shiley Inc.*, 989 F.2d 142, 145 (3d Cir. 1993).

² *See Lincoln Ben. Life Co. v. AEI Life, LLC*, 800 F.3d 99, 105 (3d Cir. 2015) (“The state of organization and the principal place of business of an unincorporated association are legally irrelevant. ‘Accordingly, the citizenship of an LLC is determined by the citizenship of its members.’ For complete diversity to exist, all of the LLC’s members ‘must be diverse from all parties on the opposing side.’” (footnotes omitted)).

13. In his Complaint, Plaintiff does not make any demand for a specific, monetary sum. *See generally*, **Exhibit A**, Compl.

14. Where, as here, a complaint does not limit its request to a precise monetary amount, the district court makes “an independent appraisal of the value of the claim.” *Angus v. Shiley, Inc.*, 989 F.2d 142, 146 (3d Cir. 1993).

15. Plaintiff claims in all Counts of the Complaint that, as a result of the alleged accident, he “was caused to sustain and did sustain *serious and permanent personal injuries* requiring the care and treatment of physicians, *hospitalization* and medication and has been and *will in the future continue to be hampered in his daily routine.*” *See Exhibit A*, Compl. at ¶¶ 4, 8, 12, 16 (emphasis added).

16. Plaintiff further seeks punitive damages in addition to compensatory damages from both Defendants. *See Exhibit A*, Compl. at *ad damnum* clauses.

17. Given the nature and extent of Plaintiff’s alleged damages, the Complaint places at issue more than \$75,000, exclusive of interest and costs. “[T]he amount in controversy is not measured by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated.” *Angus*, 989 F.2d at 146.

18. Plaintiff’s claim for damages therefore exceeds the requisite amount in controversy for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

III. CONSENT TO REMOVAL

19. As of the date of this Notice of Removal, there has been no proof of service of original process as to Defendant, Vanessa Perez, docketed in the state court action under docket number HUD-L-2467-19. *See Exhibit B*, Docket.³ Additionally, Mercedes-Benz lacks any

³ Retrieved July 12, 2019.

knowledge or information that Defendant, Vanessa Perez, has been served with original process to date.

20. Accordingly, the provisions of 28 U.S.C. § 1446(b)(2)(A), requiring the joinder or consent of all properly joined and *served* defendants to this removal, are inapplicable at the present.

IV. VENUE IS PROPER

21. The United States District Court for the District of New Jersey is the federal district encompassing the Superior Court of New Jersey, Law Division, Hudson County, where this suit was originally filed. *See* 28 U.S.C. 118(a). This action is therefore being removed to the United States District Court for the district embracing the place where the action is pending, in accordance with 28 U.S.C. § 1441(a).

V. NOTICE OF REMOVAL TO PLAINTIFFS AND STATE COURT

22. Pursuant to the provisions of 28 U.S.C. § 1446(d), Mercedes-Benz will promptly file a copy of this Notice of Removal with the clerk of the Superior Court of New Jersey, Law Division, Hudson County, and will serve a copy of same upon all adverse parties.

VI. DEMAND FOR JURY TRIAL

Mercedes-Benz hereby demands a jury trial as to all claims triable in this action.

VII. CONCLUSION

WHEREFORE, Mercedes-Benz hereby gives notice that the matter styled as *Alexandru Popa v. Vanessa Perez et al.*, Docket No. HUD-L-2467-19, is removed to the United States District Court for the District of New Jersey.

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

By: /s/ Joseph H. Blum

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***Mercedes-Benz USA, LLC (incorrectly identified as
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Dated: July 12, 2019